

## REMARKS

Applicant respectfully requests reconsideration of this application. No claims have been amended. No claims have been cancelled. No new claims have been added. Therefore, claims 3-24 are now are presented for examination.

### 35 U.S.C. § 103 Rejection

Claims 3-24 stand rejected under 35 U.S.C. §103(a), as being unpatentable over Fisher et al, U.S. Patent No. 6,243,691 (“Fisher”) and Cooper, “Going, going, gone, Tradition Gives Way to Technology, British Telecom World, March 1990” (“Cooper”) in view of Biais et al., “An Empirical Analysis of the Limit Order Book and the Order Flow in the Paris Bourse, December 1995 (“Biais”).

Claim 3, in pertinent part, recites, “prior to a live, in-person auction, establishing a starting bid for an item in an online environment by performing an interactive pre-auction bidding process in the online environment for a predetermined amount of time, the pre-auction bidding process including communicating the item to online users, receiving bids for the item from online bidders, and choosing as the starting bid a highest bid from the bids received . . . accepting a bid from an online bidder in the online environment reflecting the online bidder’s maximum proxy price, and bidding on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum proxy price” (emphasis provided).

Fisher discloses “bids are *recorded by the system* and *bidders are updated* with the current auction status information” and “[w]hen appropriate, the system closes the auction from further bidding and *notifies the winning bidders* and losers as to the auction outcome” (Abstract; emphasis provided). Cooper discloses “transmitt[ing] bids *through telephone lines and data channels*, allowing buyers to place their bids as though they

were in Bond Street auction room itself – the *system sufficiently rapid to allow them to compete with the live auction*” (page 1, paragraph 10; emphasis provided).

Biais discloses “gradually shift[ing] from a daily call auction to a computerized limit order market in which *trading occurs continuously from 10 a.m. to 5 p.m.* . . . [t]he *opening price at 10 a.m. is determined by a call auction* . . . [p]rior to this call auction, a *sequence of tentative call auctions occurs before the opening*, in order to facilitate the *price discovery process*” (page 3; emphasis provided). Fisher, Cooper and Biais, neither individually nor when combined, teach or reasonably suggest “prior to a live, in-person auction, establishing a starting bid for an item in an online environment by performing an interactive pre-auction bidding process” or “choosing as the starting bid a highest bid from the bids received” or “bidding on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum proxy price” as recited by claim 3.

Applicant respectfully disagrees with the Examiner’s characterization of the references and herein submits further explanation. For example, first, Biais discloses the “opening price at 10 a.m. is *determined by a call auction*” (page 3; emphasis provided). The *first call auction at 10 a.m. sets the opening price*, since trading starts at 10 a.m., and *setting of the opening price* whatever that may be at the opening time (10 a.m.) is not the same as performing an interactive pre-auction bidding process to establish the starting price, as recited by claim 3. Furthermore, the call auction of Biais is not the same as the interactive pre-auction bidding process, as recited by claim 3. Stated differently, for example, the establishing of the starting price, as recited by claim 3, involves an interactive re-auction bidding process, while the *setting of the opening price* simply refers to setting of the opening price at the opening time.

Second, the sequence of tentative call auctions, prior to the [first] call auction, of

Biais is to facilitate the “price *discovery* process” (page 3; emphasis provided) and is not the same as “establishing a starting bid . . . by performing an interactive pre-auction process in the online environment” as recited by claim 3 (emphasis provided). The process of *discovering* (the price) is not same as establishing (a starting bid), as recited by claim 3. At best, Biais discloses a price *discovery* process, which does not include “communicating the item to online users, receiving bids for the item from online bidders, and choosing as the starting bid a highest bid from the bids received” as recited by claim 3 (emphasis provided).

Third, although Biais discloses “*trading occurs continuously from 10 a.m. to 5 p.m.*” (page 3; emphasis provided), it does not teach or reasonably suggest performing the interactive pre-auction bidding process . . . for a predetermined amount of time” as recited by claim 3 (emphasis provided). Stated differently, the duration of time (10 a.m. to 8 p.m.) in Biais refers to the time period for *continuous trading* and is not same as predetermined amount of time for performing an interactive pre-auction bidding process, as recited by claim 3.

Fourth, Biais, like Fisher and Cooper, does not teach or reasonably suggest proxy bidding including bidding on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum proxy price, as recited by claim 4. Hence, Biais adds nothing relevant to Fisher and Cooper with regard to claim 3. Accordingly, for at least the reasons set forth above, Applicant respectfully requests the rejection of claim 3 and its dependent claims be withdrawn.

With regard to independent claims 4-6, 18 and 22, they contain one or more limitations similar to those of claim 3. Accordingly, Applicant respectfully requests the rejection of claims 4-6, 18 and 22 and their dependent claims be withdrawn.

### **Conclusion**

Applicant submits that claims as amended are now in condition for allowance. Accordingly, Applicant respectfully request that the rejections be withdrawn and the application be allowed.

### **Invitation for a Telephone Interview**

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

### **Request for an Extension of Time**

Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

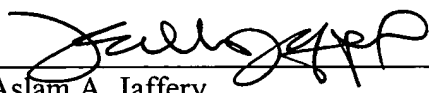
### **Charge our Deposit Account**

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: 6/10/04

  
\_\_\_\_\_  
Aslam A. Jaffery  
Reg. No. 51,841

12400 Wilshire Boulevard  
7<sup>th</sup> Floor  
Los Angeles, California 90025-1030  
(303) 740-1980